

Supreme Court No. SC93404

SUPREME COURT OF MISSOURI

NAYLOR SENIOR CITIZENS HOUSING, LP, et al.,

Plaintiffs/Appellants,

vs.

SIDES CONSTRUCTION COMPANY, INC., et al.,

Defendants/Respondents.

Appeal from the Circuit Court of Ripley County
The Honorable Michael Ligons, Circuit Judge

Cause No. 11RI-CV00588

SUBSTITUTE BRIEF OF RESPONDENT SCHULTZ ENGINEERING SERVICES, INC.,

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Abbreviations:

“AB” Appellants’ Brief

“LF” Legal File

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JURISDICTIONAL STATEMENT

This appeal is brought by Naylor Senior Citizens Housing, LP and Naylor Senior Citizens Housing II, LP, Appellants, from an Order and Partial Judgment of the Honorable Michael Ligon of the Circuit Court of the County of Ripley granting Defendants Sides Construction Company, Inc., City of Naylor, and Schultz Engineering Services, Inc.'s separate motions to dismiss Appellants' petition. Section 512.020 R.S.Mo., authorizes appeal from said Partial Judgment.

No issue fell or falls within the exclusive appellate jurisdiction of the Missouri Supreme Court as set forth in Article V, Section 3 of the Missouri Constitution. Therefore, jurisdiction initially fell within the Missouri Court of Appeals, Southern District. § 477.060 R.S.Mo. However, upon Order of this Court and because of the general interest or importance of a question involved or for the purpose of reexamining the existing law, this matter was transferred to this Supreme Court for final determination of the issues raised by the parties as set forth in Article V, Section 10 of the Missouri Constitution.

STATEMENT OF FACTS

Naylor Senior Citizens Housing, LP and Naylor Senior Citizens Housing II, LP (the “**Naylor Partnerships**” or “**Appellants**”) are Missouri limited partnerships. (LF 7). John Dilks (“**Dilks**”) was a non-attorney partner of the Naylor Partnerships. (LF 8, AB 6). This appeal arises out of a lawsuit, filed in the Circuit Court of Ripley County, on September 21, 2011, by Dilks, on behalf of the Naylor Partnerships and himself, against the Defendants for negligent design or construction of a building. (LF 7-9). Dilks’ 19-paragraph original petition alleged Plaintiffs suffered damages on September 22, 2006. (LF 7-9).

On or about October 24, 2011, Defendants Schultz Engineering Services, Inc., City of Naylor, and Sides Construction Company filed separate motions to dismiss the Naylor Partnerships’ original petition. (LF 12-15; 24-33). Plaintiffs then retained counsel and filed a reply to the motions to dismiss on December 21, 2011. (LF 33-41). In support of its reply, Plaintiffs attached an affidavit of Dilks. (LF 38-39). Thereafter, Plaintiffs, through counsel and prior to a hearing on the motions to dismiss, sought leave and filed their 25-paragraph first amended petition. (LF 59, 61).

After a hearing on the motions to dismiss, the Trial Court found the original petition, filed by Dilks on the Naylor Partnerships’ behalf, was “a nullity and, as such, had no legal [e]ffect from the date of filing.” (LF 70). As the Naylor Partnerships waited until the day prior to the statute of limitations running on their claims to file the same, the effect of the Court’s finding and Order was to bar them from re-filing said claims. (LF 7-8, 77). Upon motion by Plaintiffs, the Trial Court entered its Partial Judgment, making its above Order final, on May 2, 2012. (LF 98).

POINTS RELIED ON

- I. The Trial Court did not err in dismissing Appellants' claims, because their petition was a legal nullity in that filings by a non-attorney lay person on behalf of an artificial entity, such as a limited partnership, are null and void, and John Dilks, a non-attorney partner of Appellants, signed and filed the pleadings on behalf of the partnerships without the signature of a licensed attorney. [Responds to Point I and II, in part]**

Risbeck v. Bond, 885 S.W.2d 749 (Mo. App. S.D. 1994)

6226 Northwood Condominium Ass'n v. Dwyer, 330 S.W.3d 504 (Mo. App. E.D. 2010)

Palmore v. City of Pacific, 393 S.W. 3d 657 (Mo. App. E.D. 2013)

- II. The Trial Court did not err in dismissing Appellants' claims, because their petition was a legal nullity in that, whether or not John Dilks conducted the unauthorized practice of law is irrelevant as an artificial entity, such as a limited partnership, cannot be represented by a non-attorney, and any pleadings filed by a non-attorney on the entities behalf are a nullity, and in fact Mr. Dilks did engage in the unauthorized practice of law. [Responds to Point II]**

Automobile Club of Mo. v. Hoffmeister, 338 S.W.2d 348 (Mo. App. E.D. 1960)

Palmore v. City of Pacific, 393 S.W. 3d 657 (Mo. App. E.D. 2013)

6226 Northwood Condominium Ass'n v. Dwyer, 330 S.W.3d 504 (Mo. App. E.D. 2010)

STANDARD OF REVIEW

Appellants mischaracterize the record and argue that since the affidavit of Dilks was submitted, it was considered by the Trial Court and therefore transformed the motions to dismiss into ones for summary judgment. (AB 5). The Order does not indicate such affidavit was ever considered, the Trial Court did not notify the parties that it intended to review the pleadings and documents as a summary judgment motion, and the Legal File contains no evidence to suggest otherwise.

Under such circumstances, the Trial Court's Order is treated as a dismissal, and not one for summary judgment. *Pikey v. Bryant*, 203 S.W.3d 817, 821 (Mo. App. S.D. 2006). The standard of review for this dismissal is de novo and this dismissal should be affirmed if it is supported by any ground, regardless of whether the trial court relied on that ground. *Lynch v. Lynch*, 260 S.W.3d 834, 836 (Mo. banc 2008) (emphasis added); *France v. Podleski*, 303 S.W.3d 615, 618 (Mo. App. S.D. 2010).

ARGUMENT

Both of Appellants' Points Relied On address their argument that the nullity rule has been abandoned, restricted, or otherwise should not have applied to Dilks' actions taken on behalf of the Naylor Partnerships. In the interest of clarity and efficiency, Respondent addresses this argument in response to Appellants' first point relied upon. Respondent addresses Appellants' argument that Dilks' signing and filing of the Appellants' pleading, on their behalf, did not constitute the practice of law in response to Appellants' Point II.

- I. The Trial Court did not err in dismissing Appellants' petition, because the petition was a legal nullity in that filings by a non-attorney lay person on behalf of an artificial entity, such as a limited partnership, are null and void, and John Dilks, a non-attorney partner of Appellants, signed and filed the pleadings on behalf of the partnerships without the signature of a licensed attorney. [Responds to Point I and II, in part]**

Appellants' main argument is that the "nullity rule," which provides that a legal action taken by one not authorized to practice law is a nullity and is subject to dismissal, has been abandoned by Missouri courts and is not applicable to Dilks' actions taken on behalf of the Naylor Partnerships. However, this argument is belied by clear and well-established principles governing the practice of law in Missouri.

- A. Missouri's well-established rules governing the practice of law on behalf of artificial entities required the Naylor Partnerships to act through a licensed attorney, if at all, in its circuit courts.

The rules governing the authority of an individual to practice law in this state are well settled. "Missouri has adopted a policy that the practice of law and the doing of law business, both in and out of its courts, shall be limited to persons with specific qualifications and duly licensed as attorneys." *Risbeck v. Bond*, 885 S.W.2d 749, 750 (Mo. App. S.D. 1994). This policy does not prevent individuals from representing themselves in Missouri's courts or elsewhere, but does prohibit non-attorney individuals from representing others. *Id.* (non-attorney agent cannot file pleadings for another or otherwise practice law); *Liberty Mut. Ins. Co. v. Jones*, 130 S.W.2d 945, 955 (Mo. banc 1939); *Sellers By and Through Booth v. Denney*, 945 S.W.2d 63, 65-66 (Mo. App. S.D. 1997) (non-attorney minor's grandmother, not acting as a guardian or next friend, could not represent minor for purposes of appealing dismissal of minor's action against mother).

While two specific and narrowly tailored exceptions exist¹, this prohibition has consistently been applied to non-attorney individuals' attempts to represent an artificial entity in this State's courts. *See e.g., Palmore v. City of Pacific*, 393 S.W.3d 657, 664 (Mo. App. E.D. 2013) ("A corporation, being an artificial person and creation of law, cannot appear or act in person, including the filing of petitions in circuit court."); *6226 Northwood Condo. Ass'n. v. Dwyer*, 330 S.W.3d 504, 506 (Mo. App. E.D. 2010); *Schenberg v. Bitzmart, Inc.*, 178 S.W.3d 543, 544 (Mo. App. E.D. 2005); *Joseph Sansone Co. v. Bay View Golf Course*, 97 S.W.3d 531, 532 (Mo. App. E.D. 2003); *Stamatiou v. El Greco Studios, Inc.*, 935 S.W.2d 701, 702 (Mo. App. W.D. 1996); *Property Exchange & Sales, Inc. by Jacobs v. Bozarth*, 778 S.W.2d 1, 3 (Mo. App. E.D. 1989).

In this regard, the Missouri judiciary has seen fit to treat individuals and artificial entities differently. This Supreme Court has explained:

¹ This Supreme Court has carved out two limited exceptions. Supreme Court Rule 5.29(c) allows for non-attorney employee representation of a corporation in employment security proceedings and Rule 148.01 permits non-attorney officer or employee representation of a corporation in small claims court actions. Neither exception applies here or has been extended beyond the tightly circumscribed authorizations articulated in the Rules. *See Palmore*, 393 S.W.3d at 664 (permitting employee representation of a corporation in small claims court and dismissing same employee's application for trial *de novo* in circuit court); *Haggard v. Division of Employment Security*, 238 S.W.3d 151, 154 (Mo. banc 2007) (refusing to extend Rule 5.29(c) exception to state agency).

...Unlike individuals, corporations are not natural persons, *Clark v. Austin*, 340 Mo. 467, 101 S.W.2d at 982, but are creatures of statute. Businesses operating in corporate form are entitled to certain benefits that are denied to others. In addition to benefits, however, corporations also have certain restrictions placed upon them. One such restriction in Missouri is that a corporation may not represent itself in legal matters, but must act solely through licensed attorneys. *Liberty Mut. Ins. Co. v. Jones*, 130 S.W.2d at 955.

Reed v. Labor & Indus. Relations Comm'n, 789 S.W.2d 19, 21 (Mo. 1990); *Hensel v. American Air Network, Inc.*, 189 S.W.3d 582, 584 (Mo. banc 2006) (recognizing that sanction for unauthorized representation is different with respect to improper filings by an individual and a corporation).

The prohibition against non-attorney representation of artificial entities was recently reinforced by the Eastern District Court of Appeals in *Palmore*. 393 S.W.3d at 664. There, Vault Company, a Missouri corporation, was not represented by an attorney in a small claims hearing, as permitted by Rule 148.01. However, after an adverse ruling, the corporation, through its non-attorney representative, filed a request for a trial de novo with the circuit court. Acknowledging this was a matter of first impression, the Eastern District likened the filing of the application for trial de novo to the filing of a new action in circuit court. From there, it held, relying on *Bozarth* and *Joseph Sansone Co.*, that the filing of the application was the practice of law and should have been performed by an attorney for

the company. *Id.* As a result, the filing of the application was void, as were all actions taken by the non-attorney representative in the trial de novo. *Id.*

In Missouri, a limited partnership is not a natural person, but rather an artificial entity created by statute. *See Chapter 359 R.S.Mo., et seq.* Being an artificial entity, it is subject to the same limitations as corporations. “[I]t cannot appear or act in person. It must act in all its affairs through agents and representatives. In legal matters, it must act, if at all, through licensed attorneys.” *Bozarth*, 778 S.W.2d at 3; *see also Reed*, 789 S.W.2d at 21 (artificial entities have benefits and restrictions which natural persons do not); *Clark*, 101 S.W.2d at 982; *Palmore*, 393 S.W.3d at 664. This conclusion is further consistent with that reached by numerous courts outside of Missouri which have addressed the issue as to limited partnerships. *See e.g., Nat. Bank of Austin v. First Wisconsin Nat. Bank*, 368 N.E.2d 119, 125 (Ill. App. 1977); *DeBry v. Cascade Enterprises*, 879 P.2d 1353, 1362 (Utah 1994); *James D. Pauls, Ltd. v. Pauls*, 633 F.Supp. 34, 34 (S.D. Fl. 1986).

It is undisputed that the Naylor Partnerships were not natural persons; they were artificial entities created pursuant to Missouri statute. Being artificial entities, they were required to act in all legal matters, if at all, only through a licensed attorney. This includes the filing of the original petition. Dilks was not an attorney and therefore the original petition, filed by him on Appellants’ behalf, violated Missouri’s well-established rules prohibiting non-attorney representation of artificial entities in its circuit courts.

B. The nullity rule has not been abandoned in Missouri.

Appellants argue that the Trial Court erred by not allowing them extra time to find an attorney and properly re-file their claims, broadly claiming that the strict rules

governing the signing of pleadings have been relaxed. They fail to cite a single instance wherein any court has abandoned the above prohibition on non-attorney representation of artificial entities and adopted a direction of “relaxation” for artificial entities though.

Instead, they attempt to jam the proverbial square peg into a round hole by citing to inapposite case law relating to individuals’ representation of themselves to the situation presented. Appellants cite to *Glover v. State*, *Carter v. State*, and *In re Estate of Conard*² wherein courts did allow individuals to subsequently sign their own unsigned criminal and probate filings. However, these authorities fail to support Appellants’ argument (relating to artificial entities) because as explained by the fourth authority they cite, *Hensel v. Air America Network, Inc.*, “[t]he rule is different with respect to filings on behalf of a corporation.” 189 S.W.3d at 584; *see also Reed*, 789 S.W.2d at 21 (businesses operating in corporate form have benefits and restrictions that individuals do not). This distinction between representation of individuals and artificial entities, notably absent from Appellants’ brief, is ultimately fatal to their claims. The fact that courts have given individuals, failing to sign their own pleadings, a little leeway does not support the notion that said leeway has or was intended to extend to artificial entities or otherwise abrogate or

² *In re Estate of Conard* also recognized that Rule 55.03 only permits a party to cure the lack of signature on a paper filed in court; it does not permit a party the opportunity to amend the pleading in any manner. 272 S.W.3d 313, 319 (Mo. App. W.D. 2008). The first amended petition sought to be introduced by Plaintiffs, under the guise of a Rule 55.03 amendment, was significantly more developed than the original petition.

relax the nullity rule in any way. See *Hensel*, 189 S.W.3d at 584; *Reed*, 789 S.W.2d at 2. If this Court wanted to adopt such policy, it would have stated so rather than make explicit distinctions between artificial entities and individuals, as it did in *Hensel* in 2006.

In fact, all of the decisions relied upon by Appellants were handed down after the Eastern District Court of Appeals, in *Schenberg v. Bitzmart, Inc.*, affirmed a trial court's similar non-recognition of an unauthorized filing despite the legal effect of making such filing untimely. 178 S.W.3d at 544-545. In that case, the trial court treated a motion for new trial, filed by a non-attorney principal shareholder of two artificial entities on behalf of the entities, as null and void even though the effect of such decision was to make the appellants' notice of appeal untimely. 178 S.W.3d at 544-545. Again, if the intent of the opinions above (relating to individuals) was to relax the rules relating to artificial entities, the opinions would have addressed the uniform line of authority dealing with artificial entities – all of which did not and do not afford artificial entities the same leeway or “second chances” that some courts have afforded to mainly pro se individual litigants. These prior authorities, such as *Schenberg*, were not implicitly or expressly overruled, and the treatment of this issue as to artificial entities has not changed since, as evidenced by the *Palmore* and *6226 Northwood Condominium Association* decisions.

Further, contrary to Appellants' claims, this Court did not make such a leap in *Haggard* or reverse the some seventy years of precedent. This Court indirectly visited the issue of non-attorney representation of an artificial entity in *Haggard v. Division of Employment Security*. 238 S.W.3d at 154. However, the question specifically presented to the Court was whether a party could void an administrative proceeding ruling, after the fact

and upon judicial review, without having raised the issue of nullity during the initial proceeding. *Id.* at 155. This Court correctly emphasized that Haggard, the movant, made no objection to the unauthorized practice of law at the initial hearing and under those circumstances, where error was not raised and preserved, this Court would not invalidate the administrative proceeding ruling simply “because a party to the decision was represented by a non-lawyer”. *Id.* (entire discussion opined under paragraph titled “Failure to object to use of non-attorney”).

Far from a statement altering seventy years of precedent, *Haggard* simply reaffirmed the notion that error “not raised and preserved, [is] waived.” *Id.* In fact, consistent with a focus on the concept of waiver, the *Haggard* Court stated “[c]ontrary to Haggard’s assertions, nothing mandates dismissal of this action because DES was improperly represented by a non-lawyer unless the error was raised and preserved.” *Id.* (emphasis added). Again, if this Court desired to have abandoned the nullity rule with respect to artificial entities in *Haggard* it could have explicitly done so and also explicitly addressed and/or overruled the numerous appellate decisions upholding the rule above.

It did not, and therefore has not been interpreted as altering the nullity rule in the fashion proposed by Appellants. The two post-*Haggard* appellate opinions on point both recognized that the nullity rule, with respect to artificial entities, was and is still good law. See e.g., *Palmore*, 393 S.W.3d at 664 (applying nullity rule on March 19, 2013); 6226 *Northwood Condominium Ass’n*, 330 S.W.3d at 506 (applying rule March 10, 2010). In both cases, those courts properly refused to recognize the improper filing, consistent with the Trial Court’s decision here. Therefore, Appellants’ argument that the nullity rule has

been abandoned or that the rules restricting artificial entities' actions in circuit courts to those taken by a licensed attorney have been relaxed are unavailing.

- C. The Trial Court's dismissal of the original petition was appropriate because it was filed by Dilks, a non-attorney, and was not subject to amendment because the amendment of a nullity is impossible.

Where a non-attorney attempts to file pleadings on behalf of an artificial entity in a Missouri circuit court, our courts have consistently and repeatedly held such unauthorized filing is void and should be dismissed. *See e.g., Palmore*, 393 S.W.3d at 663-664 (“Because Vault Company’s application for trial *de novo* was not filed by an attorney, its application was void *ab initio*.”); *6226 Northwood Condominium Ass’n*, 330 S.W.3d at 506 (“Generally, where a representative engages in the unauthorized practice of law, the proper remedy is to dismiss the cause or treat the actions taken by the representative as a nullity.”); *Risbeck*, 885 S.W.2d at 750 (“[a]s plaintiffs’ petition was not signed by an attorney at law, see Rule 55.03, and as plaintiffs did not purport to represent themselves, but were represented by a person unauthorized to do so, the trial court properly dismissed the petition”); *Joseph Sansone*, 97 S.W.3d at 532 (“Because Bay View is a corporation and a licensed attorney did not file its notice of appeal, the notice of appeal is void.”); *Credit Card Corp. v. Jackson County Water Co.*, 688 S.W.3d 809, 811 (Mo. App. W.D. 1985) (failure of corporation to file appellate brief through licensed attorney “means that in effect no brief was filed on behalf of the corporation”). Therefore, the Trial Court did not err when, consistent with the authorities above, it refused to recognize the Appellants’ filing, even for the purpose of amendment, and dismissed their claims.

The Trial Court's refusal to recognize the original petition, even for purposes of allowing amendment under Rule 55, is further supported by the well-recognized responsibility of our judiciary to define, control, and protect the practice of law in Missouri. *See generally Eisel v. Midwest BankCentre*, 230 S.W.3d 335, 339 (Mo. banc 2007). Rule 55.03 requires every filing to be signed "by at least one attorney of record in the attorney's name or by the self-represented party." **Mo. R. Civ. P. 55.03(a)**. The Rule envisions a situation where the party filing the pleading was, in fact, entitled to file it. Respondent knows of no Missouri court that has ever applied the Rule's signature savings language to allow a non-attorney acting on behalf of an artificial entity to "cure" its signature when the signature deficiency presented is not the omission of, but the very presence of a non-attorney signature on the filing.

In fact, it has been held that "Rule 55.03(a)... only permits a party to cure *the lack of signature* on a paper filed in court – the paper must otherwise be adequate." *In re Estate of Conard*, 272 S.W.3d 313, 319-320 (Mo. App. W.D. 2008) (emphasis included). In this regard the *Conard* Court recognized the pleading must otherwise be proper, but for the signature omission. Dilks' filing on behalf of the limited partnerships was not otherwise proper, but rather constituted the unauthorized practice of law.

To recognize Appellants' petition as warranting the opportunity for amendment under Rule 55.03 is recognition that the pleading is not void and would justify the unauthorized practice of law. A court cannot recognize a pleading as warranting amendment without in fact recognizing it as more than a nullity. Such recognition, even in the smallest manner, "would destroy the salutary principle that [an artificial entity] cannot

act in legal matters or maintain litigation without the benefit of an attorney.” *Bozarth*, 778 S.W.2d at 3. (disallowing corporation to assign cause of action to president as end-around to the prohibition against non-attorney representation of corporation). Therefore, the Trial Court’s non-recognition of Appellants’ pleading was warranted under the circumstances in that allowing Appellants to re-file their petition, despite the statute of limitations, would have legitimized Appellants’ (and Dilks’) unauthorized practice of law.³

II. The Trial Court did not err in dismissing Appellants’ claims, because their petition was a legal nullity in that, whether or not John Dilks conducted the unauthorized practice of law is irrelevant as an artificial entity, such as a limited partnership, cannot be represented by a non-attorney, and any pleadings filed by a non-attorney on the entities behalf are a nullity, and in fact Dilks did engage in the unauthorized practice of law. [Responds to Point II]

Appellants’ second point on appeal mainly echoes their nullity-rule arguments raised in point one except that they also assert that Dilks’ actions did not constitute the

³ The use of Rule 55.03 to circumvent the rigid time prescriptions of the statute of limitations and afford an artificial entity “extra” time to file, based only on Rule 55.03’s “promptness” standard also presents the troublesome question whether such judicial extension of the statute of limitations is proper.

practice of law.⁴ In support, Appellants attempt to distinguish Dilks' actions from those taken by various non-attorney individuals (on behalf of artificial entities) in several Missouri appellate opinions – all of which upheld the nullity rule.

However, Appellants' practice of law claims, like Point I, run contrary to clear and well-established case law in this State. Any person who "appears before any court in the interest of another, and moves the court to action with respect to any matter before it of a legal nature" engages in the practice of law. *Automobile Club of Mo. v. Hoffmeister*, 338 S.W.2d 348, 355 (Mo. App. E.D. 1960). This includes the act of filing pleadings for an artificial entity in Missouri's courts.⁵ *Risbeck*, 885 S.W.2d at 750; *see also Palmore*, 393 S.W.3d at 664; *In re Global Const. & Supply, Inc.*, 126 B.R. 573, 575 (Bankr. E.D. Mo.

⁴ Appellants expend part of their argument attempting to explain that Dilks' actions on behalf of Appellants were perpetrated at the direction of a law firm. Pursuant to the standard of review, insertion of such facts, from Dilks' Affidavit, is improper; however, assuming, arguendo, such facts are properly before this Court, this Substitute Brief addresses them.

⁵ The rule is less clear regarding filings before administrative agencies, though such issue is not presently before this Court. *See Reed*, 789 S.W.2d at 23; *c.f. State ex rel. Missouri Dept. of Social Services v. Admin. Hearing Comm'n.*, 814 S.W.2d 700 (Mo. App. W.D. 1991); *Division of Employment Security v. Westerhold*, 950 S.W.2d 618 (Mo. App. E.D. 1997); *Perto v. Board of Review*, 654 N.E.2d 232 (Ill. App. 2 Dist. 1995).

1991) (applying Missouri law: mere act of filing petition on behalf of corporate Chapter 11 debtor constituted unauthorized practice of law).

It is undisputed that Dilks signed and filed Appellants' claims, on their behalf, to initiate their cause of action against Defendants. Therefore, it is undisputed that Dilks' action constituted the practice of law, as a matter of law. *Automobile Club of Mo.*, 338 S.W.2d at 355. Since Dilks was not an attorney, his actions on behalf of Appellants were unauthorized and thus subject to dismissal under the nullity rule. This is actually the takeaway of the cases Appellants themselves rely upon in their brief. See *Joseph Sansone Co.*, 97 S.W.3d at 532 (characterizing filing of notice of appeal by non-attorney for corporation as the unauthorized practice of law, which was subject to dismissal); *Stamatiou*, 935 S.W.2d at 702 (refusing to consider motion filed by lay person on behalf of corporation "since a corporation cannot practice law..."); *Schenberg*, 178 S.W.3d at 544 (characterizing post-trial motion filed by non-attorney for corporation as the unauthorized practice of law); *6226 Northwood Condominium Association*, 330 S.W.3d at 506 (characterizing application for trial de novo filed by non-attorney for corporation as the

unauthorized practice of law, which was subject to dismissal).⁶ Accordingly, it is unclear why Appellants attempt to compare Dilks' actions to those in the authorities above given the uniform position of the Courts that all of the filings on behalf of the artificial entities constituted the unauthorized practice of law (and were subject to dismissal under the nullity rule).

Notwithstanding this point though, this Court need not entertain Appellants' attempt to recast the issue of this case into a discussion of what constitutes the practice of law. As explained above, the nullity rule applied to Dilks' actions taken on behalf of Appellants. Whether it was the practice of law or not, such action was void because Dilks was not an attorney.

⁶ Appellants correctly note that in *6226 Northwood Condominium Ass'n*, the trial court allowed a condominium association to represent itself without sanction. (AB 11); *see 6226 Northwood Condominium Ass'n*, 330 S.W.3d at 505. However, Appellants fail to mention that the Court of Appeals reversed the trial court's judgment on this exact point. *Id.* at 506. The Court of Appeals directed the trial court to dismiss the case because the condominium association was unrepresented, thereby reaffirming the controlling rule yet again. *Id.* at 506.

CONCLUSION

The Trial Court did not err in dismissing Appellants' claims. John Dilks, a non-attorney partner of the Naylor Partnerships, was not authorized to sign and file Appellants' original petition on their behalf. This constituted the unauthorized practice of law. Missouri law is clear the filing is considered null and void and warrants dismissal. No error occurred when the Trial Court ruled in precisely this fashion. Therefore, for all the reasons set forth above, Respondent Schultz Engineering Services, Inc. respectfully prays that this Court uphold the Trial Court's Order dismissing Appellants' claims.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that, on this 5th day of August, 2013, I caused true and correct copies of the foregoing document to be served upon the parties receiving notice through the Court's ECF system by filing with the Court's ECF system at the date and time filed.

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CERTIFICATE OF COMPLIANCE

By submitting this Brief, the undersigned counsel for Respondent hereby certifies the following:

1. This brief conforms with Missouri Rule of Civil Procedure 55.03;
2. This brief conforms with Missouri Rule of Civil Procedure 84.06(b) relating to length;
3. The number of words used in this brief is 4,576.

/s/ David A. Zobel